

**Phipps Houses Services, Inc., Lambert House Redevelopment, Mapes Court, Inc., Lee Goodwin Residence, Inc. and Sojourner Truth House, Inc. and Service Employees International Union, Local 32E, AFL-CIO.** Cases AO-332 and AO-333

February 28, 1996

**ADVISORY OPINION**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on January 16, 1996, Phipps Houses Services, Inc., Lambert House Redevelopment, Mapes Court, Inc., Lee Goodwin Residence, Inc., and Sojourner Truth House, Inc. (jointly, the Petitioners) filed two petitions for an Advisory Opinion as to whether the Board would assert jurisdiction over them based on the Board's current jurisdictional standards. The first petition seeks an opinion as to Phipps Houses Services, Inc., the managing agent of various residential apartment buildings and mixed residential and commercial buildings, and Lambert House Redevelopment, which appears to be the owner of one such building. The second petition requests an opinion as to Phipps Houses Services and the other three corporations, Mapes Court, Inc., Lee Goodwin Residence, Inc., and Sojourner Truth House, Inc., which are the apparent owners of three other buildings managed by Phipps Houses Services. In pertinent part, the petitions and subsequent briefs filed by the Petitioners allege as follows:

1. A proceeding, Case SE-59040, is currently pending before the New York State Employment Relations Board (the NYSERB) in which the Service Employees International Union, Local 32E, AFL-CIO (the Union) has filed a representation petition concerning the representation of certain employees employed at 1005 East 179th Street (Lambert House). Phipps Houses Services is the managing agent for Lambert House. The building service employees working at Lambert House are employed by Lambert House and are supervised and managed by Phipps Houses Services. Lambert House is named as the sole employer of the Lambert House employees in the proceeding before the NYSERB.

2. A second proceeding, Case No. SE-59036, is also currently pending before the NYSERB in which the Union has filed a representation petition concerning the representation of certain employees employed at three residential buildings located at 2147 Southern Boulevard (Mapes Court), 1950 Prospect Avenue (Lee Goodwin Residence), and 2136 Crotona Parkway (Sojourner Truth House). Phipps Houses Services is the managing agent for Mapes Court, Lee Goodwin Residence, and Sojourner Truth House. The building service employees working at each of the buildings are employed by the respective buildings and are supervised and managed by Phipps Houses Services. Sojourner Truth House and Phipps Houses Services are named as the employers of the Mapes Court, Lee Goodwin Residence, and Sojourner Truth House employees in the proceeding before the NYSERB.

3. Phipps Houses Services, Inc., a New York corporation with its principal office and place of business located at 43 West 23d Street, New York, New York, is engaged in business as the managing agent for various residential apartment buildings and mixed residential and commercial buildings located throughout the New York City Boroughs of Manhattan, the Bronx, and Queens. Phipps Houses Services does not own these buildings, but only manages them.

4. During the calendar year 1994, Lambert House collected in excess of \$7 million in rent from its tenants, and purchased fuel, cleaning and building materials, lumber, and other goods valued in excess of \$50,000 from suppliers located within the State of New York which had received the aforesaid materials directly from outside the State of New York.

5. During the calendar year 1994, Mapes Court collected in excess of \$500,000 in rent from its tenants, and purchased fuel, cleaning and building materials, lumber, and other goods valued in excess of \$50,000 from suppliers located within the State of New York which had received the aforesaid materials directly from outside the State of New York.

6. During the calendar year 1994, Lee Goodwin Residence collected in excess of \$1 million in rent from its tenants, and purchased fuel, cleaning and building materials, lumber, and other goods valued in excess of \$50,000 from suppliers located within the State of New York which had received the aforesaid materials directly from outside the State of New York.

7. During the calendar year 1994, Sojourner Truth House collected in excess of \$1 million in rent from its tenants, and purchased fuel, cleaning and building materials, lumber, and other goods valued in excess of \$50,000 from suppliers located within the State of New York which had received the aforesaid materials directly from outside the State of New York.

8. The Union, to the knowledge of the Petitioners, has neither admitted nor denied the aforesaid commerce data set forth above and the NYSERB has not made any findings with respect thereto.

9. There are no representation or unfair labor practice proceedings involving the Petitioners pending before the Board.

All parties were served with copies of the petitions for an Advisory Opinion, but no response thereto was filed by the Union.

Having duly considered the matter,<sup>1</sup> the Board finds that it would assert jurisdiction over Petitioners Mapes Court, Lee Goodwin Residence, and Sojourner Truth House. The Board has previously established \$500,000 in gross annual rental income as the discretionary jurisdictional standard for residential buildings.<sup>2</sup> Here, as the petition alleges that the annual rental incomes from the residential buildings owned by Mapes Court, Lee Goodwin Residence, and Sojourner Truth House respectively exceed \$500,000, the aforesaid Petitioners clearly satisfy this standard. Further, as the petition also alleges that Mapes Court, Lee Goodwin Residence and Sojourner Truth House respectively purchase fuel, cleaning and building supplies, lumber, and other goods valued in excess of \$50,000 from suppliers located within the State of New York who had received the aforesaid materials directly from outside the State of New York, the aforesaid Petitioners also satisfy our statutory jurisdictional standards.

The Board also finds that it would assert jurisdiction over Petitioner Lambert House. It is unclear, based on the petition and subsequent brief, as to whether Lambert House is a commercial, residential, or diversified property. The Board has established different standards for residential and commercial buildings.<sup>3</sup> Further, where the property owned by a petitioner is mixed residential and commercial, the Board has historically analyzed one or the other portions of the petitioner's operation to determine whether they separately meet the relevant jurisdictional standard.<sup>4</sup> However, notwithstanding this general rule, the Board has recognized an exception where the gross annual revenues from the petitioner's operation exceed \$1 million—the highest

discretionary jurisdictional monetary standard the Board applies to any enterprise.<sup>5</sup> Here, as the petition alleges that the combined annual rental income from all the residential and commercial properties owned by Lambert House exceeds \$7 million, the Lambert House clearly satisfies this standard. As the petition also alleges that Lambert House purchased fuel, cleaning and building supplies, lumber, and other goods valued in excess of \$50,000 from suppliers located within the State of New York who had received the aforesaid materials directly from outside the State of New York, Lambert House clearly satisfies our statutory jurisdictional standards.

Finally, the Board finds that it would also assert jurisdiction over Petitioner Phipps Houses Services. The petitions allege that Phipps Houses Services is the managing agent of the Mapes Court, Lee Goodwin Residence, Sojourner Truth House, and Lambert Development buildings. As indicated, the aforesaid rental properties meet the discretionary and statutory jurisdictional requirements mandated by the Board. Historically, the Board has asserted jurisdiction over the managing agent where the underlying buildings meet the necessary jurisdictional requirements.<sup>6</sup> Here, as Phipps Houses Services is the managing agent for the Mapes Court, Lee Goodwin Residence, Sojourner Truth House, and Lambert House buildings, all of which meet our jurisdictional standards, we find that Phipps Houses Services satisfies the Board's jurisdictional standards.

Accordingly, the parties are advised that the Board would assert jurisdiction over Petitioners Mapes Court, Lee Goodwin Residence, Sojourner Truth House, Lambert House, and Phipps Houses Services.<sup>7</sup>

<sup>1</sup> The Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> See *Parkview Gardens*, 166 NLRB 697 (1967), and *Imperial House Condominium*, 279 NLRB 1225 (1986), *affd.* 831 F.2d 999 (11th Cir. 1987) (establishing \$500,000 standard for residential apartments and for condominiums and cooperatives, respectively).

<sup>3</sup> Compare *Parkview Gardens* and *Imperial House Condominium*, *supra*, with *Mistletoe Operating Co.*, 122 NLRB 1534 (1959) (holding that jurisdiction will be asserted over commercial office buildings when the employer's gross annual revenue amounts to \$100,000, of which \$25,000 is derived from organizations whose operations meet any of the Board's standards exclusive of the indirect outflow or indirect inflow standards).

<sup>4</sup> See *Carol Management Corp.*, 133 NLRB 1126 (1961), and cases cited there.

<sup>5</sup> See 373–381 *South Broadway Associates*, 303 NLRB 973 (1991); 135–145 *West Kingsbridge Avenue Assoc.*, 300 NLRB 946 (1990); and *Mandel Management Corp.*, 248 NLRB 186 (1980).

<sup>6</sup> See, e.g., 373–381 *South Broadway Associates*, *supra*, and cases cited there.

<sup>7</sup> The Board's Advisory Opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.